

Florence, New Jersey 08518-2323
August 27, 2012

A special meeting of the Florence Township Zoning Board of Adjustment was held on the above date at the Municipal Complex, 711 Broad Street, Florence, NJ. Chairman Zekas called the meeting to order at 7:30 p.m. followed by a salute to the flag.

Secretary Bott then read the following statement: "I would like to announce that this meeting is being held in accordance with the provisions of the Open Public Meetings Act. Adequate notice has been provided to the official newspapers and posted in the main hall of the Municipal Complex."

Upon roll call the following members were found to be present:

Brett Buddenbaum	Candida Taylor
William Bott	B. Michael Zekas
John Groze	Keith Crowell
Larry Lutz	Lou Sovak

ABSENT: Anant Patel

ALSO PRESENT: Solicitor David Frank
Engineer Anthony LaRosa
Planner Barbara Fegley

Chairman Zekas asked that all cellphones be shut off. He called for Application ZB 2012-05, continuing from the July 31, 2012 meeting. The applicant, Florence PV, LLC is requesting use variance and preliminary and final major site plan approval to permit construction of a solar photovoltaic electricity generating facility for property located on Bustleton Road, Florence Township, Block 160.01, Lot 5 and Block 170, Lot 1.01.

He said he would like to pick up where the last meeting left off and let representatives of the residents question testimony given so far by the applicant. Patrick McAndrew, representing the applicant, said at the last meeting his witnesses were cross examined by representatives of the residents. He wanted to confirm that the resident's representatives will present their case and then let him have a chance for rebuttal. Chairman Zekas said that was correct. It was on the motion of Taylor, seconded by Lutz to open the meeting to the public. All ayes – motion carried.

Jeffrey Baron, the attorney representing a group of residents, called Joseph Burgis, a professional planner, to testify. Mr. Burgis was sworn in by Solicitor Frank. He testified that he is employed by Joseph H. Burgess Associates, his own firm, located in Westwood New Jersey. He said he is the owner of a planning, landscaping and architectural firm with 12 employees. He has a Master's Degree in state and regional planning from Rutgers University, obtained in 1975. He has been a planning consultant since that time.

He started at a firm in Manhattan and in the early 80's came to New Jersey and in 1988 he opened his own firm. He has appeared before many planning and zoning boards in the State of New Jersey and has also represented many boards. He was accepted as an expert in the area of professional planning. Mr. Burgess confirmed that he is familiar with solar power. Mr. Baron asked him to review the report he prepared. Mr. Burgess said he was contacted by a resident in May and discussed the application. He said there was a similar matter in Hamilton, and that is where the residents got his name. He received copies of requested documents to see if he could represent the residents in the way they would like him to. After careful review he determined that he would be able to get involved. He reviewed the entire development application package, and a variety of state and county documents that were relevant to this matter. He reviewed municipal land use law and will highlight amendments to those laws that are pertinent. He also reviewed case law on this topic.

Mr. Burgis began a power point presentation, starting with photos of the site of the application. He said he took the photographs himself during the third week of May 2012. He estimated that the presentation will take about an hour. His next slide presented an overview of the presentation. He will provide his position and how he arrived at that conclusion and then he will present the factual basis he used for the opinion and finally he will explain particular areas that he thinks are the heart and soul of the application. He said he does not believe that the applicant has met its statutory burden. He said he will focus on statewide planning context for the project, the master plan and zoning issues and the statutory criteria that applies to the application. He explained that the state planning context helps to define the public good and that is important because under negative criteria in municipal land use law an applicant must prove there is no substantial detriment to the public good. He said the applicant's planner focused on two issues defining good. He said the use does not generate any traffic and the use does not generate any school children so these represent the public good. Mr. Burgess said he wanted to focus on the public good in a different way. He said he wants to talk about two state planning initiatives that conflict with each other. He said the question is how to resolve the conflict. He said the state identifies how the issue should be resolved. The first plan is that the state wants to encourage solar energy. But it also has a competing initiative that is equally as clear that the State of New Jersey wants to protect farm land. How do you deal with these conflicting initiatives? He said the energy master plan provides the answer. It states that solar is encouraged but it is discouraged on active farm land. He feels this is the key to this application. He said he also wants to talk about the master plan because the statute states the applicant must show there will be no substantial impairment to the intent and purpose of the zone plan and master plan of the community. He said Florence's master plan is very clear with its intent. He wanted to highlight that it says the Township wants to protect agriculture. Also it says the Township wants to retain its rural character and it states that the Township wants to maintain farmland vistas. He said in each instance this application falls short of those intents of the master plan. He said another issue is statutory criteria and case law. He said he will provide proof that the applicant does meet the Sica criteria as it applies to this case. He firmly believes that this is a negative criteria case. He said positive criteria is dealt with through statute and municipal land use law. The question is not if solar will benefit the residents it is if it

can be shown there is a substantial detriment to the public good or a substantial impairment to the intent and purpose of the master plan. From what he has seen, the conclusion should be that the applicant cannot meet the statutory burden. He wanted to start with the statewide planning context. He said he reviewed the State Development and Redevelopment Plan. It says a lot about agricultural and the rural designation of the site. He referred next to the New Jersey Energy Master Plan and said it encourages solar and active farmland properties. He outlined some of the other documents he will discuss. He explained the State Redevelopment Plan divides the State into 11 planning areas and 5 different centers. He said the area in question is in what is called a rural planning area. It is the highest priority area for farmland preservation. It is characterized by agricultural lands and environmentally sensitive resources and the focus of the planning area is to contain large contiguous farmland properties and to achieve and maintain the viability of agriculture and designed to maintain the rural environment. He said the policies set forth in the state plan are numerous but he felt four were most relevant. They include the promotion and preservation of the agricultural industry, retention of farmland to protect and enhance agricultural vitality, promote development that supports the agricultural industry and promoting opportunities for related agricultural businesses. He said the placement of solar panels will not promote any of these items. It is not related at all to this kind of use. He said the Energy Master Plan is very clear that it encourages solar in the State, however, it goes on to say it should not impact open space or farmland preservation. He said the current administration does not support the use of rate payer subsidies to turn farmland into grid supply solar facilities. He said the plan states the policy of encouraging renewable resources should not impact open space and farmland. He said finally it states very clearly that the State should not subsidize the loss of productive farmland. He said if not on farmland where should these facilities be located. He said the Energy Plan clearly states that these projects should be placed on brownfields and landfills. These are well suited for the development of large solar generation. He said the State Legislature took a step to show how much they want to encourage development of solar energy. He said Municipal Land Use Law was amended to state that solar facilities are allowed in certain areas and it supersedes local zoning. He said there are 19 sites in the area that qualify for the solar energy. He said the State made it very clear where they want these facilities located and the Brownfield Act reaffirmed this.

He now referred to the County Agricultural Development Area plan showing that the site in question is in an area where certain criteria must be met. This land is being actively farmed and the soils are such that even if it were not there would still be strong potential for agricultural use. He said the site must be zoned agricultural, and it is, and it must be reasonably free of conflicting development. He said it was determined that this site meets all of this criteria and almost 40 percent of the site is identified as prime farmland soils or farmland soils of statewide importance. The rest is also good farming soil. The information was from the United States Department of Agricultural National Resource Conservation Service. He said he wanted to look at the local level and the Master Plan and Zoning issues related to the project. The Florence Master Plan contains specific commentary on the need to preserve farmland. It identifies the reasons for preservation also. He said the site is designated for agricultural and low density residential. The

Planning Board made the determination for the low density housing as an alternative. He said the applicant said that part of the public good is that they are saving the Municipality the cost of providing education for children if developed for residential use. He said the reality is that the governing body and planning board made the determination that is what they wanted to see at the site if it was no longer used for agricultural use. He said the plan goes on to explain justification of this land use policy. It said beyond the economic components associated with farmland, it explains that you want to provide an enjoyable aesthetic environment, provide for an attractive amenity and it talks about providing a balance with the more developed areas of the Township. He referred to some photos of Bustleton Road where the project is proposed to be built. The photos show an aesthetic component to the farmland that the Master Plan seemed to focus in on. He said the text of the Master Plan reiterates the need for green areas and open space. He said his immediate concern was that the farmland area would be broken into pieces and there are other large solar projects already approved nearby. He said there would be a large amount of farmland devoted to solar fields. He said it would be about 20 percent of all the agricultural land in this part of the Township. He said this is inconsistent with the Master Plan. It states that the loss of farmland can be considered a serious social and economic loss. It also states that farmland areas are an important and rapidly diminishing resource that should be protected. He said the goals and objectives described in the Master Plan are to protect the agricultural land from the effects of development and to retain the pattern of agricultural or low density residential development. He said in 2007 the Planning Board went through the statutorily required reexamination of the Master Plan. He said he would like to discuss actual statutory requirements and case law. He said Municipal Land Use Law for a use variance application requires an applicant to address the negative criteria and the special reasons that further the purposes of the Municipal Land Use Law. He said one can argue that the site is particularly suited for the use or that it is an inherently beneficial use. He said in this instance, Municipal Land Use Law defines an inherently beneficial use in a very particular way and among the examples are photovoltaic arrays. Consequently the application has addressed the special reasons portion of the statute. The applicant must show that there is no substantial detriment to the public good and no substantial impairment to the intent of the Zone Plan and Zone Ordinance. He said there are a number of cases that are pertinent to this matter. They include *Sica v. Wall Township* dealing with a trauma center, *Salt & Light v. Willingboro* dealing with housing for the homeless, and *Atlantic Green Power v. Upper Pitts Grove* involving solar energy in an agricultural zone. He said the *Sica* test is a four part test. The applicant must identify the public interest at stake and identify detrimental effects that may result from the granting of the variance. Then the Board could give consideration to reasonable conditions that would reduce the detrimental effects. Finally, the Board must weigh the negatives and the positives to determine if there is a substantial detriment to the public good. He said in the *Salt and Light* case it was acknowledged that there was an inherently beneficial use but the negative criteria issue was a separate issue that needed to be addressed. He said the *Upper Pittsgrove* Case sounds as if it was written about this matter. There was a solar facility being proposed in an agricultural area and the municipality's Master Plan supported the protection of agricultural property. The court specifically focused on that text and decided that the Master Plan was telling because of its emphasis on agricultural preservation. Also in that case was the

consideration of the scenic vista. The judge looked at the buffers being used to screen the solar panels from view. It was decided that a scenic vista is different from the concept of buffering because buffering screens what is behind it but that is not the same as saying it does not impair a scenic vista. The judge felt that a scenic vista implies a more expansive view and not something just hidden behind trees; it implies an expansive panorama, and that is a clear distinction. He said Florence's Master Plan seeks to encourage the scenic vistas. He said that Sica says that the public interest at stake must be identified first. He said the applicant's planner and the applicant think that the public interest which is at stake is the provision of solar energy to address and be consistent with the Energy Master Plan. He said he feels that there are many public interests beyond the provision of a renewable energy system. He said the State, County and local interests identified earlier need to be considered when identifying the public interest that is at stake. He said the converse of all of this is the loss of 138 acres of farmland. He said the Township's intent through its Master Plan is very clear about retention of farmland and the rural feel of the location. He said land use policy does identify that solar is approved as an accessory use for on-site usage. He said it does not apply in this case because it is not an accessory use. He said the detrimental effects from the project will be loss of farmland, loss of the visual character and vista and loss of the rural nature of the area. He said there is a large amount of farmland nearby and much of it is preserved. Also, the soil samples showed very desirable qualities for farming. Another concern is the change of neighborhood character. He said the view from the residential and public right of way needs to be considered. He said in this instance the state policy efforts define public good very clearly as stated earlier. He said the conclusion is that the balance falls against this application. He said also the Board needs to decide if this application is an example of de facto zoning. He said the Township of Dover v. Dover Zoning Board of Adjustment said that the basic inquiry is if the impact of a requested variance substantially altered the character of the district as that character is described by zoning. He said the criteria would include the size of the tract in question in relation to the size and character of the district. Finally, he said, what is the nature and extent of the variation from district regulations. He said the application before the Florence Board has a tract that is nearly 15 % of the farmland in the area. He said the road frontage and visual impact are key factors and there are two solar sites already in the immediate area. He said the degree of variation is high because the State recognizes these sites should be placed in industrial zones and there are areas in the Township. He said in conclusion that although this is an inherently beneficial use, the Board is required to focus on the negative criteria. The negative criteria is not met because the application results in a substantial impairment to the Master Plan and is a substantial detriment to the public good. It would result in a substantial character change to the Bustleton Road corridor. He recommends the Board deny the application. He thank the Board for its time.

Board Member Crowell confirmed that copies of the presentation were submitted for the record. It was confirmed that a hard copy and a thumb drive containing the presentation were submitted. Member Crowell asked about a slide that was shown dealing with the soils. Mr. Burgis explained the categories of soils and said the highest is prime soils and there is a high percentage of high ranked soils at the site. Member Crowell asked if after the project was decommissioned would the quality of the soils be the same as before. Mr.

Burgis said he is not a soils expert but he has heard other experts talk about the compacting of the soil and what that does to the nutrients, but he can't say definitively. Mr. Crowell confirmed that as a point of record a geologist would need to testify to the condition of the soil after decommissioning.

Mr. McAndrew confirmed that his site is 138 acres. He asked if Mr. Burgis agreed that an inherently beneficial use is a use that serves the public good. Mr. Burgis concurred. Mr. McAndrew asked if he knew that the site was previously approved for single family homes. Mr. Burgis said he was aware of that. Mr. McAndrew asked why that was not factored into the analysis. Mr. Burgis said that was not the application in front of the Board and that is a use that the Master Plan designates to the site as an alternative to the agricultural use. He said the use before the Board now is what he focused on. Mr. McAndrew said the presentation concentrated on the potential loss of farmland. Mr. Burgis said it was also about the violation of the intent of the Master Plan and the violation of the Energy Master Plan and a number of the documents referenced in the presentation. He said the project needs to be looked at in its totality. Mr. Burgis confirmed that the preservation of farmland was a factor in his analysis. Mr. McAndrew said that building the approved houses would take away the chance of the site being farmland. Mr. Burgis said it does not take away some of the issues of the Master Plan that he raised. He said one of the faults he has with the applicant's position is that they are not acknowledging that single family residential use is a permitted use for the site. He said the governing bodies of the Township in their Master Plan made the lots larger for the agricultural site. He discussed the potential for the site reverting to farmland, and said he heard testimony that it could convert back but if technology advances the solar could advance. He did acknowledge that there is a chance that it could revert back to farmland, but he does think there could be some adverse effects to the site. Mr. McAndrew asked if this farmland is on any state or county list for preservation. Mr. Burgis said he does not know. Mr. McAndrew asked if other types of farming for this property were considered, such as a pig farm or greenhouses. Mr. Burgis said he did not. Mr. McAndrew asked if the Dover case was deemed a rezoning or did the decision stand. Mr. Burgis said he did not know. He said it did not deal with an inherently beneficial use at that time. Mr. McAndrew asked if when the legislature changed the zoning law to make solar an inherently beneficial use was it meant specifically for this kind of project. Mr. Burgis said the language used was photovoltaic arrays so he does think this project would apply. At this time Mr. Baron questioned Mr. Burgis. Mr. Baron asked who had the burden to demonstrate to the Board that this use can be put into play and comply with the master plan and all the policies presented. Mr. Burgis said this falls to the applicant. Mr. Baron referred to the soil questions posed by Member Crowell and said that the information about the soil would need to be provided by the applicant. Mr. Baron confirmed with Mr. Burgis that the zone could not be restricted to just agricultural so the governing body decided to make the lots three acres to keep the housing low density. He confirmed there was a zoning reason for residential. Chairman Zekas asked if the Dover case on de facto zoning could be explained further. He was told it would be brought up again later in the meeting. Chairman Zekas also inquired about Upper Pittsgrove and the panoramic view, he said he assumed visual impact was raised as an issue. Mr. Burgis said it was and the master plan talked about scenic vistas and the applicant proposed a

landscape buffer as this applicant has and that is why he felt it was relevant to this matter because in that case the judge made the formal determination that placing buffer plantings is not the same as a broad panoramic view of a property. Member Bott asked if after 25 years would the berm be able to be returned to farmland. Mr. Burgis said that question would be for a geologist. Mr. Hill commented that in the decommissioning report the buffering and berms were not going to be removed. Member Lutz asked if there were restrictions on what could be farmed in the agricultural zone. Mr. Burgis said he did not know and he would have to read the ordinance. He then read from the ordinance that farming is the growing and harvesting of crops or the raising and breeding of livestock with accessory buildings incidental to agricultural uses but not processing operations. Mr. Baron said he appreciates Mr. Burgis' humility, but asked if he was involved in another case involving this same type of issue in Mercer County. Mr. Burgis explained that five months ago in Hamilton Township an applicant wanted to turn 95 acres of farmland into a solar farm. He said the municipality had approved three other solar installations. He was brought in to look at the Master Plan and its designation. He said the board voted the application down with he believes one yes vote for the project. He said there were 7 or 8 hearings and there was testimony of a geologist and 2 professors on the soil compaction issue. Mr. Baron asked if based on his experience as a planner was there anything that he had seen or read that suggested on prime and unique soils there would be anything besides farming crops? Mr. Burgis said he did not think there would be any form of farming besides growing crops. Mr. McAndrew asked if Mr. Burgis was aware of the definition of agriculture that was read into record. Mr. Burgis said he was. He said it was not included in the report because the presentation was already 50 pages and there were things that were not included in the report in the interest of saving time.

At this time Mr. Baron called David VanCamp, 7 Canidae Street, Burlington, who was previously sworn in. He had a power point presentation that was entered into evidence as 02-8-27-12. The previous power point was entered in as 01-8-27-12. Mr. Baron confirmed that Mr. VanCamp's property is next to the site of the proposed solar farm. He then asked if Mr. VanCamp examined public records to be able to determine if previous testimony was accurate or not complete. Mr. VanCamp said he did. Mr. Baron said Mr. VanCamp attempted to replicate the testimony that the applicant's professionals had given where he could. He looked at sights that professionals said they worked on to compare with what the Board is looking at tonight. He said the sources were all public. Mr. VanCamp said the first page was a sight on Route 206. Mr. Hill had indicated previously that he had worked on the 3 megawatt project. It was 11 acres of solar. The next page is the same site as the first page but it shows the maintenance of the solar field. Mr. VanCamp said the photos show standing water and no maintenance. The next is in Upper Pittsgrove that was referenced by the applicant. It shows where the panels are constructed. He said there is minimal residential in the area. Next is the Upper Pittsgrove site that was denied. He said it was 422 acres of solar. The next was in Frelinghuysen, NJ. It was on 27 acres of solar with minimal residential nearby. The site plan was also shown. The bottom picture is a photo of the site. The next is in Washington Township, Mr. VanCamp said the residential in the area is minimal. Next is in East Amwell. Mr. VanCamp said he found out about it through meeting minutes of the municipality. The

application was withdrawn because of opposition to the project. Next is also in East Amwell and there is not much residential in the area. There was also a buffer placed on one side. The next continues with the previous location, showing a site plan of the solar field he said there are natural contours and buffering. He said the applicant's planner claimed that he worked on this site and that this was near residential. The next slide compares the Florence site with the East Amwell site. The next one is the Flemington Solar Farm in Raritan Township. He said it shows the location and there is minimal residential development in the area. Next is in Kingwood. It is a 10 megawatt project. The applicant's engineer said he worked on this site and there is no residential adjacency. Next is Paradise Solar Farm in West Deptford. He said it shows that there is minimal adjacency. The solar farm is operating. It also shows there is an energy facility near the site and there is a small amount of residential across Route 44. Mr. Baron said this is the only field that has any massing of residential and it is only across from one part of the field. Next is another field in West Deptford. Mr. VanCamp explained that the arrows in the photo show three smaller solar arrays. The next is a site in Franklin Township that shows an approved project with no residential in the area. The next is in Franklin Township (Warren County) that shows the site and a conception of the project. This project was denied by the municipality. The next one is in Franklin Township (Warren County). The project is still seeking approval. There is minimal residential in the area. He said it is going to provide electricity for the farm and provide some energy into the grid. The next slide is Greenwich Township. It shows the coverage of the site, not necessarily panels. The next slide is in Greenwich Township. He said it is still seeking approvals. The next is in Bayville. He said this solar is for sole use of the school. The next one is in Howell. He said this is a well station, it is a site of American Water Company. He said the other picture shows that there is glare coming off the panels. He said the next shows the Toys R' Us Headquarters. The next is in Edison. It serves the industrial park in the photo. The other photo on the slide shows glare from the panels. It was confirmed that the photo shows a roof mounted array. He said the next shows a site in Mannington that the applicant's planner mentioned as an example of visual analysis. It was said that the size and scope would be comparable to the application here. The next is in Carney's Point that shows a large parcel but he is not sure of the status of the application. The next one is in Pemberton and is comparable in size to this one. He does not know if action has been taken. He said the point of these was that there is no residential adjacency whatsoever. The next is in Fairfield. He said the photo is a shot of the site. The next is in Pilesgrove. He said this field is actually in place and there is solar on 100 acres with 71,000 panels. He said the Florence site will have 32,940 more panels. The next slide is the Florence property. He wanted to demonstrate that there are more than 30 residents near the site. The next slide highlights some of Mr. Hill's testimony where he stated in Florence that he did more than 20 projects and testimony in another town said he worked on 35-50 projects. The next slide shows the territories where PJM operates. He said all of them are in the active queue. He said it shows that area is being saturated with solar. The final slide was created with data from public taxation documents. He said it shows the towns mentioned in previous testimony. He figured out the impact on the town and the impact on the farmland. He said Florence has the most coverage of solar fields. Mr. VanCamp said on average Florence has less harvested acreage than other towns and on average there is less total land devoted to agriculture.

He said Florence is smaller than the other townships. He said he opposes the project. He said he did not change the information he found in any way and he did not omit any information. Member Groze wanted to know how many panels are on the site in Westampton. Mr. VanCamp didn't know because he said it was not a site mentioned at any of the hearings. Member Crowell clarified that Mr. VanCamp is a resident of Burlington Township, not Florence Township. Chairman Zekas asked about exhibit 6. He asked if it was withdrawn from the Board in that town because of strong opposition. He said that Mr. VanCamp implied that this was the case. Mr. VanCamp said it may have been implied and meeting minutes indicated that residents near the site came out in strong opposition to the project. He said he can't comment on why the applicant withdrew the project. Chairman Zekas said it seemed that this project had the most residents near it. Chairman Zekas asked about exhibit 25 and the numbers of panels, amount of electric produced and space needed. It is different than what was presented here, and this project is supposed to be much like what is being presented here. Mr. VanCamp said he looked at some data and there are some efficiency differences. Mr. McAndrew asked if exhibit 25 was a site plan prepared by Mr. Hill. Mr. VanCamp said it was not, but it was referenced by Mr. Miller during his testimony. He said it was comparable to the Florence site. Mr. McAndrew asked if the highlighted text on the slides was selected by Mr. VanCamp. He agreed it was. Mr. McAndrew asked about the last exhibit. He said the first three columns were information taken from public record and the last was Mr. VanCamp's interpretation of the data. Mr. McAndrew asked how long it took to put together all the exhibits. Mr. VanCamp said he has been working on this since the last meeting, about a month ago.

David Serlin appeared on behalf of Burlington Township. He called Burlington Township Planner Joseph Augustyn and Burlington Township Engineer Scott Hatfield. He said the testimony will be more global with the Master Plan concerns that Burlington Township has. Mr. Augustyn and Mr. Hatfield were sworn in by Solicitor Frank. Mr. Augustyn said he works for the Alaimo Group and is the Township Planner for Burlington Township. He has a Master Degree from the University of Pennsylvania in City Planning. He has been at the Alaimo Group since 1977 and he is licensed as a planner. He said he represents municipalities has worked on issues dealing with solar. He prepared comments in regard to this application. He presented the Board members with three handouts that were entered into evidence. There were excerpts of the Florence Township Master Plan and municipal land use law and excerpts of the Burlington Township Master Plan. These show the cooperation the Townships have in regard to development. The last is a summary of his testimony. He said there is substantial impairment to the intent and purpose of the Master Plan and there is a substantial detriment to the public good. He said there has been substantial credible evidence presented. He said is it not a solar farm, it is a photovoltaic energy facility. The Master Plan is the catalyst for ordinances that are developed and in accordance with it the land use element. The Florence Township Master Plan has an emphasis on agricultural use and agricultural preservation. He said the Master Plan reflects that the Township is an agricultural community. The Master Plan also recognizes that there could eventually be single family uses in the agricultural areas. He quoted parts of Florence Township's Master Plan in support of his argument. He said the Master Plan shows that the scenic

vista is an important thing to the Township and is beneficial to the residents. He said buffering would take away from the farmland views. He said there is a substantial difference between scenic vistas and buffers. He said the placement of homes would affect the views, but far less than solar panels. He said the Burlington Township residents see other houses when looking toward Burlington Township. He said it is not a big change to look toward Florence and see other houses. He said towns look at the Master Plans of adjacent communities when working on their own Master Plans. In this case Burlington felt comfortable with the Master Plan for Florence.

He referred to the Burlington Township Master Plan. He said there is a continuity between the two plans. On Route 130 both are commercial or industrial. In the agricultural area there was farmland that was converted to residential at a reasonable density in Burlington. Both municipalities reference the purpose of not conflicting with the neighboring municipality.

He said regarding the substantial detriment to the public good, photovoltaic energy facilities are permitted in industrial zones, so he considers it an industrial use. It is inherently beneficial throughout the town, but specifically permitted in industrial zones. He said an assembly bill permitting them in industrial zones did not permit them in commercial zones or residential zones. There are few employment opportunities and no boost to the local economy. He said the large number of residents opposing the project show there is a detriment to the public good. He asked that the Board consider the larger issue of the State Energy Master Plan where projects like this are encouraged on brownfields and landfills, not on farmland. He said the Christie administration does not support solar on farmland. Projects are encouraged for already impervious surfaces. The extensive concerns expressed by so many area residents really speaks volumes to the substantial detriment to the public good that this project will cause.

He said when he did the Master Plan for Burlington Township; he went to the neighboring municipalities to make sure adjacent land uses would be compatible. He said it is noted in the Burlington Master Plan that neighboring municipalities have the right to amend their zoning ordinances and this could impact Burlington. He said the Township will work with neighboring municipalities to avoid conflicting land use planning efforts and that is why the Township of Burlington is being represented at the hearing. He said Florence Township has put an emphasis on agriculture. He did recognize that on Route 130 there will be development. He said this site was zoned agricultural and single family at low density. He said Florence Township is not anti-solar. The Master Plan does permit on site structures. He said the emphasis is to have it on site serving that site and not grid connected. He said roof mounted panels are also permitted. He said the Master Plan was updated in 2007 and it was ahead of the times. He said Municipal Land Use Law states that development should not conflict with the general welfare of neighboring municipalities. He said Burlington Township feel that this use is not compatible with the neighboring use in Burlington. Chairman Zekas asked for a definition of a brownfield. Mr. Augustyn said the best he can say is that it is a

contaminated site by any means, it could be surface or subsurface but identified by the DEP as having a significant environmental issue.

Mr. McAndrew asked if Mr. Augustyn was here to oppose the project. The answer was affirmative. He then asked if Mr. Augustyn attended the governing body meeting in Burlington on June 19, 2012. Mr. Augustyn said he was not there. He said Mr. Hatfield did attend. Mr. McAndrew asked about how large the residential district in Burlington was. Mr. Augustyn said it is very large and stretches to Burlington City. Mr. McAndrew asked if there were any farms in the residential zone. Mr. Augustyn said there are not. Mr. McAndrew asked if there were farms in the past. Mr. Augustyn confirmed that there were farms in the past. Mr. McAndrew asked about an industrial site and if solar would be allowed there. He was told it would be. Mr. McAndrew asked him how many times he was directed to go to another municipality to oppose an application. Mr. Augustyn said this was the first time. He said because the situation is so unusual the governing body felt it was appropriate for him to come and represent the entire municipality. He discussed the different plan areas in the two municipalities.

Mr. Hatfield, Burlington Township Municipal Engineer, has a Bachelor of Science degree in Geology from Lafayette College. He also has a Bachelor of Science in Civil Engineering from Temple University. He said he has been a licensed engineer in New Jersey since 2000. He is a Certified Municipal Engineer and has reviewed a few solar applications as a zoning and planning board engineer for Burlington Township. He confirmed that he attends the Burlington Township Council Meetings. He is not in private practice. He was accepted by the Board as a witness.

He presented an aerial view with the most recent plans shown on the view. It showed the relationship of the plan to the Steeplechase development. He thanked the Board for allowing everyone to express their thoughts on the application. He said at the last meeting Mr. Hill attributed many comments to him. He said he did not agree with some of these. He said he would like to now present his point of view. He wanted to make it clear that his providing comments on the plans did not in any way mean that he was in support of the project. He said the comments are to bring to the Board's attention what he feels are significant concerns in respect to this large scale industrial development, particularly regarding screening and buffering. Mr. Hill implied at the last meeting that Mr. Hatfield and the residents of Burlington Township would be okay with the project if the large berm and landscaping were installed. He said it was also implied that the residents were not concerned with the views from second story windows. He said that was not the case. He said in his letters dated June 22, 2012 and July 24, 2012 there were comments regarding buffering and screening that were taken out of context. He said in May he contacted Florence Township to get a copy of the plans. He said he was shocked at the size of the development adjacent to a residential development and some single family dwellings in Florence. He looked at the Florence Township Land Use Ordinances and noted that the code requires one or more methods of buffering or screening including fencing, trees, shrubs or a landscape berm. It also requires that any utility apparatus appearing above the surface of the ground other than utility poles must be screened year round. He said it appeared that the most stringent setback requirement for a non-

residential use adjacent to a residential use is 100' per the code. He said it did not appear that the applicant was concerned with the potential adverse impact to the adjoining residential properties based upon what he saw in the plans. He contacted the Board professionals for Florence Township with the hopes that they would consider his concerns as part of the ongoing review of the project. On May 18, 2012 he sent an e-mail to Mr. LaRosa and Ms. Fegley regarding issues with the application, including the need for a greater setback and an elevated landscape berm. He also expressed concerns related to drainage and glare. He said he attended the public hearing on May 22, 2012 and noticed that none of the issues from his e-mail except for lot coverage and impervious coverage were addressed. He said Mr. Hill dismissed the need for a landscape berm on the grounds that the trees would not grow properly and the facility is not permanent. He said on June 19, 2012 he received an e-mail from Mr. LaRosa indicating there would be an on-site meeting on June 21, 2012 to discuss site plan issues and asking if Mr. Hatfield could attend. He said he was reluctant to attend because he did not want his attendance to be interpreted as support of the project. He felt it was important that Burlington's concerns be expressed. He responded that he was available to attend the meeting. He said he has modified his prior comments and explained that his comments are preliminary and he reserved the right to request additional information should the plans be revised or should additional testimony be presented. He said at the meeting some of the topics were buffering, drainage and set back issues. He said at no point did he agree to anything. He said he has no authority to approve anything with respect to development in Florence Township. He said he then wrote the letter to the Board Clerk on June 22 and copied Mr. Hill on it. He said it had many of the comments from his e-mail and it stated that any industrial use approved in Burlington Township adjacent to a residential zone or use requires a 150' buffer and he also stated this during the on-site meeting. He said the letter also stated that the elevated landscape berm be considered because of the second story views. He does not know why Mr. Hill said at the last meeting that he did not think Mr. Hatfield was concerned with the view from the second story windows. He requested that a scaled vertical and horizontal cross section be presented showing the relationship of a typical home in Burlington Township to the solar field and all proposed improvements. He felt this would show what would be screened from view. He said the facility cannot be screened and the berm is not adequate. He feels there should be a stormwater management plan. He said the glare study was performed during one of the longest days of the year when the sun is high in the sky. He said he has not seen a glare report yet. He would like more details regarding the decommissioning plan. The information is vague. He fears it could be abandoned and become a blight and he does not think it can be converted back to farmland. He said he has an education in geology and he believes that after the topsoil is removed and the ground is compacted he feels it would be hard to immediately convert the site back to fertile farmland. He said Burlington Township strongly opposes the application.

Member Bott asked if Mr. Hatfield had seen the photos of the glare. Member Bott said the clock in the photos is not clear. Mr. Hatfield said he is concerned that it was done on one of the longest days of the year and there is no context for where the panel is in relation to any existing homes. He said it does not tell him anything and there is no written report, it is just photos and it does not mean a lot to him. He said he is not an

expert in glare. Mr. McAndrew asked if Mr. Hatfield was a landscape architect or a certified arborist. Mr. Hatfield said he is not. Mr. McAndrew said that the photos taken of the solar panel were in response to a resident's demonstration at the last meeting. Mr. McAndrew asked if Mr. Hatfield's comments tonight about soil were in any of the reports he submitted. He said they were not because they were in response to testimony given tonight. Mr. McAndrew asked if the applicant took his suggestions and applied them to the plan. Mr. Hatfield said the applicant did except for the second floor views he requested.

Mr. McAndrew said at this point he would like to request a continuance because he received new information at this hearing he would like to do a short rebuttal next time and try and finish the application. He was asked if he would require more testimony, he said he will.

Member Bott asked Mr. Hill about the glare photos. Mr. Hill said the photos were meant to show the racking system that is being used, the actual panels that will be installed and the tilt angle and the heights of the panels. Mr. Bott said he does not believe the photos show the true glare. He said he is an expert on glare.

Member Crowell asked if the glare study would be considered a reasonable and acceptable practice. Mr. Hill said it is not a glare study, it was photos that were taken to dispute a panel that was brought to a meeting by a resident. He said the panel presented by a resident was not the same panel as the ones being proposed and it was not at the same angle and the light source was not representative of regular sunlight. He said it was reasonable and acceptable. He said this was the first time he had to do anything like this.

Mr. Baron asked the Board to consider acting on the application tonight. He also asked if the application might be finished at the next meeting if it is continued. Solicitor Frank said the applicant is entitled to the opportunity to look over what was presented at this meeting. He said the Board should grant the continuance. Chairman Zekas said there was a lot of information presented and he feels it is good idea to give the applicant a chance to respond to it. He said he would like the chance to look it over a little more also before there is action taken.

There was discussion regarding whether the applicant was supposed to bring someone from the power company or someone from Mr. Hill's firm. Solicitor Frank said his notes reflect that the applicant was going to bring someone from the utility company.

Member Crowell requested that both sides provide information to each other prior to the hearings so there is no need to continue to look over information.

Mr. McAndrew said at the next meeting he plans to respond to some of the issues raised at this meeting. He also wants to have someone testify about market values and ratables. He said there are some other professionals he will present. He said he will distribute any reports beforehand.

Chairman Zekas said he was expecting a visual regarding second floor views from the applicant. He would like to see that at the next meeting. Mr. McAndrew said he will provide that. He said he hopes that next meeting everything will be on the table and he hopes to get a vote by 10:00 pm.

Solicitor Frank said there is a request by the applicant to continue to the next meeting.

Member Bott made a Motion, seconded by Buddenbaum to open the meeting to the public. All ayes.

Joseph Stella, 2032 Bustleton Road, said he used to work for PSE&G. He called them after the last meeting and asked them to run from the Riverline stop instead of down Cedar Lane. He asked how many inverters are needed. He is concerned about the run off also. He said there is a water problem and it got worse when the school was built. He talked about what people will see when they leave their homes. Solicitor Frank swore in Mr. Stella because he actually provided testimony in some of his statements.

Motion by Crowell, seconded by Taylor to close the public portion of the meeting. All ayes.

Motion made by Taylor, seconded by Crowell to approve the applicant's request to continue the application to Monday, September 24, 2012. All ayes – motion carried.

Solicitor Frank advised that the Board should give everyone who wants to present evidence all the time they need and accommodate both sides of the issue. The Board discussed what is outside the scope of the project, such as lines and poles. Solicitor Frank advised the Board that they cannot control what the power company does in its right of way. He will find out if the visual impact can be considered while reviewing the application.

There being no further business, it was on the motion of Taylor, seconded by Buddenbaum to adjourn the meeting at 11:16pm.

William E. Bott, Secretary

WEB/aeK